App. F. IX-4

1933 (Law)

File No. 104-33

Previous References
Law 104-33-1-4;5-

Serial Nos. 7 & 8

Later References.
Law 6-34-21 & 27

PRESERVED

preserve

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 7 to 20.

Part B for March '35

SUBJECT.

Order passed in Civil Revision Petn. no 56/33-34 after remand, on the file of the Hon'ble Dy Sons (Re. Mr. D. K. Hanumantha Rao, Advte)

WD 01965—GPB—15,000—7-7-34

M. Abdul Aziz
1-4-35

P 8-34

5284

P

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore, 13th March 1935

Law 104-33-7

From

The Government Advocate
in Mysore, BANGALORE.

To

The General Secretary to the Govt.
of H. H. The Maharaja of Mysore,
BANGALORE.

Sir,

In continuation of this office letter No.808 dated the 30th June 1934, I have the honor to state that Civil Petition - No.56 of 1933-34 on the file of the High Court of Mysore, (Re: Mr. D.K.Hanumantha Rao, Advocate) which had been remanded to the lower Court for further evidence and finding, came on for disposal before the High Court on 7-3-1935 and after hearing arguments Orders were passed dismissing the Petition.

2. A copy of the Order has been applied for and the same will be sent to you as soon as it is received in this office.

I have the honor to be,
Sir,
Your most obedient servant,

Government Advocate.

CSN.

Submitted for perusal
Copy of the order may be awaited

5486/p834

2

In reply please refer to
No. 821
Enc: one

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore, 22nd March 1935

Laws 104-33-8

From

The Government Advocate
in Mysore, BANGALORE.

To

The General Secretary to the Govt.
of H. H. The Maharaja of Mysore,
BANGALORE.

Sir,

In continuation of this office letter No. 786, dated the 14th March 1935, I have the honor to forward herewith for the information of Government, a copy of the Order passed in Civil Petition No. 56 of 1933-34/After Remand, on the file of the High Court of Mysore, (Re: Mr. D. K. Hanumantha Rao, Advocate).

I have the honor to be,
Sir,
Your most obedient servant,

Government Advocate.

CSN.

OFFICE OF THE SECOND MEMBER OF COUNCIL
28 MAR 1935
No. 6002

Submitted for perusal
II member
1st member

OFFICE OF THE FIRST MEMBER OF COUNCIL
29 MAR 1935
No. 7104

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Thursday, the 7th day of March 1935.

PRESENT

MR. M. D. C. REILLY, CHIEF JUSTICE.

and

MR. JUSTICE K. SHANKARANARAYANA RAO.

CIVIL PETITION NO. 53 OF 1933-34.

Upon reading the further proceedings of the case made by the Subordinate Judge of Bangalore after remand and received through the District Judge, Bangalore with his remarks with his letter No. 475 dated 8th February 1935, and upon hearing the arguments of Mr.A.R.Nageswara Iyer, Government Advocate for Government and Messrs R. Vasudeva Murthi and H.V. Narayana Rao, for Respondent (Legal Practitioner), ~~after remand~~, the Court made the following:-

O R D E R.

O R D E R.

THE CHIEF JUSTICE.

These proceedings against the Respondent, who is an Advocate of this Court, were initiated by a petition to the Subordinate Judge of Bangalore, alleging that the Respondent had been guilty of professional misconduct. Before the Subordinate Judge could submit any report to this Court the petitioner withdrew from the proceedings in his Court, representing that he had been satisfied in regard to his financial claims against the Respondent. When the matter came before this Court on a previous occasion, it was found that no definite charges had been framed against the Respondent, and the proceedings were remanded to the Subordinate Judge in order that he should frame charges and hold an inquiry on them. The matter has now come before this Court on five charges framed by the Subordinate Judge.

The first is "That you (the Respondent) appeared for the decree-holder, Abdulla Sahib, in Execution Case No. 145 of 1931-1932 of this Court (i.e. the Subordinate Judge's Court) and received moneys from the judgment-debtor off and on to the extent of Rs. 1,100/- and not

only failed to intimate the same to the decree-holder but went on granting time to the judgment-debtor on your own account and without the knowledge and consent of the decree-holder". The decree-holder mentioned is the Petitioner in these proceedings. It is not denied that the Respondent did receive Rs. 1,100/- in amounts paid from time to time by the judgment-debtor in those execution proceedings and on receiving the instalments of payment which made up that amount consented to the sale, which was to have taken place in those execution proceedings, being postponed from time to time. That an Advocate or a Pleader engaged to conduct execution proceedings should consent on behalf of the decree-holder to an execution sale being postponed in that way on payment of part of the decreeamount being made by the judgment-debtor would certainly not be professional misconduct, unless he did it in defiance of the explicit instructions of the decree-holder. There is no suggestion in this case that the petitioner in these proceedings, who was the decree-holder, had given any instructions to the Respondent that he was not to consent to adjournments of the sale in that way or on those terms. When the Respondent received payments from the judgment-debtor in those proceedings, he ought certainly to have kept his client, the Petitioner, informed of what

was happening, and it appears that he did not do so. It is not disputed that he was very dilatory in paying over the amounts which he received to the Petitioner. But the mere receiving of the amounts was not improper in itself, and it is not suggested that it was beyond the terms of his vakalat. If he was dilatory in paying over those amounts to the Petitioner, the petitioner would have a grievance against him. But the Petitioner, as I have mentioned, has withdrawn from these proceedings and has represented to the Court that he has been satisfied by the Respondent in this matter. Although we may regard it as very regrettable that a legal practitioner should not keep his client fully informed of the progress of his case and should not inform him when he receives money on his behalf, if the client himself afterwards says that he is satisfied in the matter, I do not think we can say the legal practitioner has been guilty of professional misconduct. On the first charge I do not think any professional misconduct has been established against the Respondent.

The second charge is: "That you failed to pay to the decree-holder the said amounts received by you for and on his behalf". That charge carries the

matter no further. As I have mentioned, the Petitioner has no grievance now against the Respondent that the amounts have not been paid.

The third charge is: "That you on the 15th of March 1932 were entrusted with a sum of Rs 640/- by P.M. Abdulla Sahib (i.e. the Petitioner) for filing a suit on a mortgage-bond executed by Abdul Majeed in favour of the said Abdulla Sahib, that you did not either file the suit or return that amount to the said Abdulla Sahib". It is admitted that the Respondent received Rs 640/- from the Petitioner for the purpose of filing a suit upon a mortgage, which the Petitioner had got from Abdul Majeed. We are informed that that mortgage was one with possession and that the Petitioner had leased back the property to the mortgagor, Abdul Majeed, and that afterwards he had to sue Abdul Majeed for rent due on that lease. It is the execution proceedings in respect of that decree for rent against Abdul Majeed which are referred to in Charge 1 in this case. It is admitted that the Respondent never filed any suit on the mortgage against Abdul Majeed. The explanation offered for him is that he afterwards thought it advisable for his client, the Petitioner, instead of suing on the mortgage to bring the equity of redemption to sale in execution

of his decree for rent, and, if he succeeded in buying the equity of redemption himself in those execution proceedings, it would be unnecessary to file any suit upon the mortgage, and his client might then save himself the Court-fee of ₹ 640/-. It is not improbable that, if the Respondent gave advice to that effect to the Petitioner, it might have turned out to be good advice. The Petitioner has not been examined in these proceedings: but one Ibrahim, who describes himself as the partner of the Petitioner, has given evidence that the Respondent was telling him that he had filed the suit upon the mortgage and so putting the petitioner off. If the Respondent represented to the Petitioner that he had filed the suit on the mortgage in accordance with the original instructions but had not done so and still kept the ₹ 640/- for Court-fee in his pocket, he would clearly be guilty of serious professional misconduct. However there is nothing to support Ibrahim's evidence on this point. There is no documentary evidence to support his statement that the Respondent made any false representation that he had filed the suit upon the mortgage. At a later stage the Petitioner, for the purpose of the execution proceedings on his decree for rent against Abdul Majeed, engaged another Advocate, Mr. Lakshmana Gouda, who has given evidence in this case. He

eventually took over the execution proceedings from the Respondent. There is nothing in his evidence or in the correspondence - between him and the Respondent, which had - been exhibited, to suggest that the Respondent had ever represented to the petitioner that he had actually filed the suit on the mortgage which had been proposed. And I think the matter is clinched by what the - Petitioner himself says in his petition. - There is nothing whatever in his petition, in which he was making a number of complaints against the Respondent, to suggest that the Respondent ever told him that he had filed the proposed suit. I may mention in that connection that the Petitioner described - Ibrahim, not as his partner, but as his - friend. I do not think we can accept what the witness Ibrahim says upon the point as true. It is certainly not made out that the Respondent ever represented to the - Petitioner that he had filed a suit upon the mortgage and so had spent the ₹ 640/- on Court-fee. What may be said against - the Respondent on this charge is that he - kept the ₹ 640/- with him for a considerable time instead of returning it to the Petitioner when, as he says, he advised the Petitioner that there was a wiser and more economical course instead of filing the proposed suit. But, if the Petitioner has no grievance now

against the Respondent for not paying that Rs 640/- back to him promptly, I do not see how we can find the Respondent guilty of any professional misconduct in that matter.

The fourth charge is: "That you on or about the 17th of August 1933, though the vakalat had been virtually withdrawn, received Rs 100/- from the judgment-debtor in Execution Case No. 145 of 1931-32 and agreed to the sale being adjourned without the knowledge and consent of the decree-holder". Those are the same execution proceedings which are referred to in Charge 1 of this case. I do not understand what is meant in this fourth charge by saying that the Respondent's vakalat "had been virtually withdrawn". It is to be regretted I think that such vague language should be used in any charge in such proceedings. It is true, as I have mentioned, that for the continuation of those execution proceedings the Petitioner eventually engaged another Advocate, but that it appears was after the 17th of August 1933, the date to which this charge relates. There is nothing to show that by the 17th of August 1933 the Respondent's engagement had been terminated. So far as the evidence shows the Respondent on that date was still representing the decree-holder in those execution proceedings;

and, if so, there was nothing improper in his agreeing to the sale being adjourned as the representative of the decree-holder nor in receiving ₹ 100/- from the judgment-debtor towards the decree-amount on that occasion. If he did not inform the decree-holder promptly of what had happened, then he was not acting properly, and the Petitioner, the decree-holder, would have a grievance against him on that account. The Petitioner has represented that he has no longer any grievance against the Respondent on that or any other matter. On this charge also it appears to me that no professional misconduct has been made out against the Respondent.

A fifth charge has been framed by the learned Subordinate Judge: "That you are thus guilty of fraudulent and grossly improper conduct in the discharge of your professional duties". That means nothing except a summing-up of what the learned Subordinate Judge regarded as the result of the other four charges, if made out.

In my opinion it has been shown in the course of these proceedings that the Respondent acted in an unbusinesslike way, did not keep his client properly posted up with the progress of the execution proceedings and was very dilatory in making payments to the Petitioner. That is not the sort of

conduct we expect of an Advocate of this Court, But in my opinion nothing has been shown which amounts to professional misconduct, for which we should take action against the Respondent under the Legal Practitioners' Regulation. In my opinion the Respondent should be acquitted on the charges which have been framed against him, and the petition should be dismissed.

Sd/- H. D. C. HEILLY,

CHIEF JUSTICE.

MR. JUSTICE K. SHANKARANARAYANA RAO,

I agree.

Sd/- K. Shankaranarayana Rao,

JUDGE.

"Copy".

Deputy Registrer.

MSR/7